IV. COMMUNICATIONS WITH SUBSCRIBERS -- PRESENT AND PAST

A. Win-Back Communications Versus Verification Communications

A number of commentors attack carrier communications with customers. Some commentors even request the Commission to prohibit ILEC communications. For example, WorldCom and Time Warner ask for restrictions (basically prohibitions) on ILEC communications to customers who have requested to be changed to a new LEC.[59] Other commentors attack already-communicated messages from ILECs.[60]

It is clear that a number of commentors object to PC "verification" messages being communicated to subscribers who switch carriers. AT&T, for example, asks the Commission not only to conclude that Executing Carriers need not verify Submitting Carrier PC changes, but that they be forbidden from doing so.

U S WEST does not intend to get into the issue of whether such a prohibition such as that requested by AT&T is or is not warranted. That debate is better engaged in by carriers who communicate "verification" messages, which U S WEST does not do.

Our interest here is in assuring that the Commission understand and appreciate the difference between a "verification message" (sent before a carrier switch is processed and executed) and a "win-back" communication (which may contain a "verification" line or two). The latter is not only lawful business conduct

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[59] WorldCom at 6; Time Warner at 4-6.

[60] Specifically, MCI attaches a communication from BellSouth; LCI attaches a communication from Ameritech.

engaged in by carriers across the telecommunications industry but it is clearly protected First Amendment speech that in no way can be demonstrated to be anticompetitive.[61] Indeed, given the response that U S WEST -- as well as other carriers -- have received to such communications with respect to intraLATA toll switches particularly, the value of such a communication to the overall consumer welfare is patent.[62]

Like Ameritech, U S WEST sends out win-back communications to customers only after the switch of carriers has taken place.[63] As U S WEST pointed out in our Opening Comments, all carriers have a right to know what customers they serve

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[61] LCI attacks the Ameritech correspondence as "discourag[ing] customers from changing their" carrier. LCI at 3. A reading of that correspondence demonstrates that LCI's characterization is inaccurate. The correspondence primarily touts Ameritech's virtues as a carrier, promoting its service and reputation. However, even if LCI were correct in its characterization, there is nothing unlawful in discouraging customers from leaving a carrier.

[62] For example, Ameritech points out that "as part of [its] 'winback' efforts" conducted between January 1 and June 30, 1997, it discovered that "approximately 36% of all residential customers contacted and 25% of all small business customers contacted" "indicated that their intraLATA toll service provider had been changed without their knowledge, authorization, or consent." Ameritech at 6. Compare U S WEST at 25 (mentioning a BellSouth survey and U S WEST's experience with the unauthorized switching occurring regarding intraLATA service); and BellSouth's communication which contains a neutral consumer advisory about what to do if the customer was not aware that its service had been switched.

[63] Ameritech at 6 n.5. While MCI complains about the BellSouth correspondence it attaches to its filing, it never does establish that the switch in carrier had not been made (which the letter represents), only that MCI did not know about it. MCI at 7. U S WEST has no knowledge of BellSouth's processes, but in U S WEST's case (as discussed more below) this would hardly be possible.

and which customers they have lost.[64] Indeed, U S WEST currently generates daily a "Win/Loss" report for CLECs that advises what customers they have gained since the prior day and those they have lost.[65] Obviously, carriers who receive such reports are free to send out communications to the customers they have lost.[66]

The Commission must be cautious in addressing carrier-customer communications. Barring something deceptive about the communication, it is clearly protected by the First Amendment. Arguments that such communications should be restricted should be rejected.

V. PC PROTECTION

A. Communications About PC Protection

A number of parties address the issue of PC protection and associated communications. Not surprisingly, IXCs -- while they acknowledge the possible

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[64] U S WEST at 22. We also pointed out that such information had been provided to IXCs for years. Id. Compare GTE at 9 (IXCs regularly request customer carrier changes in bulk (via magnetic tape)).

[65] Such reports can be requested either electronically or manually. Such would clearly constitute "adequate notification" to a carrier, such as MCI claims is necessary. MCI at 7. It should be immaterial whether a receiving carrier actually reviews the information daily or not.

Due to existing system issues, the CLECs get these reports daily, but U S WEST does not get a daily report, at this time. We are working on this matter so that U S WEST can receive a similar report in a similar time frame.

[66] Thus, CompTel is incorrect in its assertion that ILEC win-back communications are "based on the unique ability of [ILEC] marketing and sales personnel to access PC-change information." CompTel at 6. The information is reported to all carriers and is reported *vis-à-vis* changes to that carrier's customer base -- not others. Compare Frontier at n.37; emphasis in original (observing that it has no objection to LECs "like any other carrier -- communicating with customers *after* the fact").

necessity of such protection in limited circumstances[67] -- argue to restrict the communications about such protection either by content[68] or by service or by time.[69] ILECs generally argue that PC protection was driven by consumer demand to protect against bad-acting carriers providing IXC services[70] and that the consumer concern over unauthorized carrier switches (having been generated by IXCs) will continue as competition in other markets increases. Indeed, the slamming of customers with respect to intraLATA toll strongly suggests that customers may increasingly protect their accounts.[71]

U S WEST believes that the Commission should not regulate in the area of PC protections or the communications associated with them. We agree with Ameritech than any suggestion that PC protection is somehow inherently

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[67] See, e.g., AT&T at 19; TRA at 21-22.

[68] These arguments are generally made in the context of attacking the content of PC protection communications already conveyed by certain ILECs.

[69] See, e.g., MCI at 11, 15-16; AT&T at 20; Intermedia at 7; CompTel at 8-9 (all arguing that ILECs should not be permitted to solicit PC protections from customers with respect to local or intraLATA service for some period of time, ranging from six months to a year after the occurrence of some event).

[70] See, e.g., SNET at 3-4, 6; Ameritech at 21; GTE at 11-12.

[71] It is not correct to assert, as some commentors do, that the absence of meaningful competition with respect to a particular service offering (such as local service) means that there is no reason to offer PC protection because slamming cannot occur. See CompTel at 8; AT&T at 18. A customer who has been slammed uses the PC protection as a prophylactic against future conduct. Particularly a customer who has been slammed with respect to IXC services (which ILECs provided in only limited circumstances) might well want to protect their other services to avoid the fallout from aggressive competitive responses associated with those services. It seems quite contrary to the public good to prohibit a customer from being able to exercise such a choice. And the offering and exercising of such choice cannot be characterized as an ILEC "anticompetitively lock[ing]-in . . . customers," as claimed by CompTel at 8. Compare TRA at 22 (referencing carriers "'locking in'" customers).

anticompetitive (in the antitrust sense of the word) should be rejected.[72] While it is true that PC protections can be implemented in a manner that may be deceptive or that may operate to retard easy switching of carriers, the market,[73] judicial and regulatory venues seem to be well-equipped, at this point in time, to provide the appropriate direction in this area without additional federal regulatory intervention.[74] So long as a PC protection communication is voluntary,[75] and is not deceptive and clearly communicates the potentially affected services in language calculated to be understood by the customer,[76] a carrier should not be prohibited from engaging in such communication with respect to any category of service (including local service) at any time.

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[72] Ameritech at 20.

[73] As SNET has pointed out, the existence of PC protection has not diminished vigorous competition in its territory. SNET at 3. See also TOPC at 3 (noting that PC protection is not anticompetitive because it does not limit speech and the subscriber always retains the prerogative to take action to facilitate a proposed commercial transaction); PUCT at 4-5.

[74] For example, to the extent that PC protection communications have already been found to be deceptive, other carriers will clearly take these findings into account when crafting their communications.

[75] U S WEST remains of the position that such communications should not be compelled, but should be at the discretion of the carrier. U S WEST at 41. To the extent, however, that such communications occur, we support the general kinds of additional elements as suggested by TRA at 25-26 (that the particular services be identified clearly; that how PC protection is secured and how it is eliminated be explained; that whether the PC protection carries over to another carrier be addressed); MCI at 17; Ameritech at n.21.

[76] See, e.g., U S WEST at Section IV and n.49. And see Ameritech at 5-6, 8-9 (noting the market confusion over the current terminology associated with service categories).

It is obvious from the filed comments that ILECs have different positions regarding the provision of PC protection -- some offering the protection only in response to affirmative customer request,[77] some being more proactive in their communications.[78] But so long as PC protection is afforded **the customer** with respect to any of its serving carriers (and the comments filed in this respect indicate that such is the case)[79] further regulation of PC protection is unnecessary.

B. The Entity Controlling PC Protection

U S WEST agrees with those commentors who argue that PC protection should be controlled by the end user customer and solely by that customer.[80] Contrary to the arguments of some commentors, carrier-agents should not be permitted to impose or remove PC protection either through LOAs,[81] 3PV[82] or "reverse PC" conduct.[83]

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[77] See, e.g., GTE at 12. The majority of carriers appear to approach PC protection pursuant to the more passive approach.

[78] See, e.g., SNET at 7-8.

[79] See, e.g., id. at 7-8; Ameritech at 22; GTE at 12. Unreasonable discrimination in this regard could already be addressed under 47 U.S.C. §§ 201(b), 208. See GTE at 13.

[80] Working Assets at 6 (only subscriber should be able to order PC protection and not carriers on their behalf, since latter has great potential for abuse); NCL at 8; PUCT at 4; TRA at 3.

[81] 360 at 4 (PC protection should be able to be reversed either through direct contact with customer or signed LOA).

[82] See, e.g., MCI at 18; AT&T at 18; Excel at 4; BCI at 3, 9-10 (PC protection should be able to be ordered or eliminated by any carrier, subject to 3PV for all transactions).

[83] ACTA addresses something called a reverse PC process which is extremely difficult to understand. However, the gist of it seems to be that a customer would always be switched back to a prior carrier unless the customer advised to the

Because U S WEST believes that PC protection should remain peculiarly a personal "self-help" offering, we oppose those suggestions that such protection should be permitted to be activated or eliminated through carrier action or 3PV conduct.[84]

C. "Carry-Over" Of PC Protection

A number of commentors address the Commission's inquiry about whether PC protection would carry over when an end user changes from one ILEC to another. Some support the carry-over of such protection;[85] others oppose it.[86]

U S WEST opposes the carry-over of PC protections when a customer moves from one carrier to another, both on practical and sound-commercial-practice grounds. While there are certain situations where an assuming carrier would know about an end user's utilization of PC protection (such as a reselling CLEC of an ILEC's services),[87] there are other situations where the carrier would not have such information (such as where the assuming carrier is purchasing Unbundled Network Elements ("UNE") or is facilities-based).

Thus, U S WEST believes that the better practice is for the end user to make all commercial service arrangements with the new provider (PC carrier for IXC,

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contrary. ACTA at 29-31. This proposal would appear to totally undo the notion of PC changes submitted by carriers. Thus, it would be absolutely unworkable.

[84] See, e.g., Ameritech at 23.

[85] See, e.g., WorldCom at 10; Ohio Consumer Counsel at 3.

[86] See, e.g., Ameritech at 23-24. Compare TRA at 26 (where TRA does not actively oppose a carry-over, but includes in its notification a statement that such will not carry-over).

[87] See note 36, supra.

need for PC protection, etc.).[88] While, in a resale arrangement, this might amount to "carrying-over" the protection, such carry-over would actually be the result of an independent determination.[89] Indeed, it is this process that is incorporated into U S WEST's resale agreements, where (with but one exception) all communications between an end-user customer served by a CLEC are required to be handled between the CLEC and the customer.[90]

VI. THIRD-PARTY ADMINISTRATOR FOR PC TRANSACTIONS

A number of commentors support the establishment of a third-party administrator to process all PC changes, verifications, and PC protections.[91] U S WEST supports those commentors opposing this notion.[92]

The creation of such an administrator would not be cheap and the need for such an entity is certainly not demonstrated by any of the supporting entities.[93]

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[88] See, e.g., Ameritech at 24 ("customers who change LECs should interface exclusively with their new LEC with respect to their local exchange needs").

[89] Compare id. at 24 (nothing that the reseller can arrange for the "renewal" of the PC protection).

[90] The one exception has to do with an allegation of slamming. If an end user calls U S WEST and advises that they were switched from one LEC to another without authorization, U S WEST will process a switch-back to the appropriate carrier and will not require the end user to communicate that message through a carrier.

[91] See, e.g., CompTel at 7; LCI at 4-10; TRA at 6-7, 9, 18-21, 24; MCI at 25-26; Sprint at 6, 19-20. Although not precisely advocated as a "gatekeeper" function, the proposals for mandated 3PV for all carriers, where the 3PV would handle all of the referenced transactions, would amount to a similar administrative scheme, lacking only the "national" component.

[92] See, e.g., Time Warner at 14-15; NC Public Staff at 2, 7; BellSouth at 16.

[93] Other than speculative concerns about ILEC-bad acting in the form of delaying the processing of PC changes or somehow manipulating their content (something which is very unlikely to occur given current processes and technology (see note 3,

None of the entities proposing such an administrator really provide much by way of detail as to the organization or structure. Those that do, propose an organization similar to the 800-database structure currently deployed.[94] Despite such identification, however, those parties never demonstrate the fundamental need for such a structure.

For one thing, it is unclear how such a structure/entity would operate *vis-à-vis* a carrier's switch. Right now, as Sprint notes, an ILEC must perform the switch changes necessary to convert a customer from one IXC to another (or from an ILEC to some CLECs).[95] Presumably, LECs would continue to have to "process" PC changes to accomplish this, regardless of whether the "administration" was lodged elsewhere.[96] Thus, the creation of such an organization would "have the effect of doubling the transaction costs associated with a subscriber's selection of primary carrier."[97] The creation of such a mammoth bureaucracy is totally without

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supra), the primary factual evidence as to why such an administrator should be appointed is that IXCs engaged in "jamming" actions with respect to resellers in the past and similar conduct could occur from ILECs. TRA at 20-21. Here again, the sins of the IXCs are being laid on the backs of the ILECs. The Commission should reject this evidence as demonstrating any current compelling need for such an administrator.

[94] TRA at 18-21.

[95] Sprint at 11.

[96] But compare MCI at 25 (first bullet, where it suggests that this third-party administrator would "process the vast majority of switch activities," suggesting that there would be more than "administration" undertaken by this administrator but routing translations, as well).

[97] FNPRM ¶ 11. While the Commission was there making an observation about "dual" verification obligations *vis-à-vis* Submitting and Executing Carriers, its observation is no less relevant in this context.

foundation based on the existing record evidence.

VII. THE MAKE WHOLE PROCESS

A number of commentors comment on the Commission's proposals regarding carrier-to-carrier liability, as well as carrier-to-subscriber liability. The vast majority of commentors seem to support a model that looks something like the following: A subscriber who has paid a Slamming Carrier would look to the Slamming Carrier to pay over the amounts submitted by the subscriber and collected by the Slamming Carrier to the Original Carrier. The Original Carrier would then recalculate the price of the calling transactions under its rate schedule and reimburse the affected subscriber with the difference. Having been made whole with respect to its foregone revenues, the Original Carrier would be expected to reinstate premiums, bonuses, etc.

An individual who realized that it had been converted to a carrier not of its choosing would not be required to pay that carrier (to avoid the insult). The Slamming Carrier[98] would be required to provide the Original Carrier with certain billing details within a certain time to allow the Original Carrier to re-rate the calling transactions according to its rate schedule. The Original Carrier would then re-rate and bill the calls and the subscriber would pay the Original Carrier, who would then restore the appropriate premiums, bonuses, etc.

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[98] In some respects, it is not fair to call this carrier a Slamming Carrier, since the proposals being proffered generally agree that the same methodology would be in place regardless of fault. Thus, the plan is to make everyone whole, regardless of the fact that no one might have done anything "wrong."

The former proposals are fairly aligned with the Congressional proposal in Section 258(b). The latter are derivations from the former meant to capture the spirit of Section 258(b) in light of Congress' silence when there is no collection by the Slamming Carrier.

It is not U S WEST's intention here to criticize these proposals. So long as the subscriber is not absolutely absolved from payment, U S WEST believes there are a number of various methods by which both innocent carriers and subscribers can be made whole.

Our purpose in commenting on the "make whole proposals" is primarily to draw the Commission's attention to the administrative complexity of some of what is being suggested. For example, a number of the proposals require the Original Carrier to "re-rate" the call based on billing information/detail being provided by the Slamming Carrier to the Original Carrier. This might not be as easy to accomplish as it sounds.[99] Finding an individual calling record among millions of records might not be easy. Furthermore, if a carrier does not bill through its own systems but uses a LEC, there could be further complications. Finally, finding a Slamming Carrier to either remit monies or billing information might prove to be an impossibility[100] -- thus frustrating not only the Congressional remedy but any Commission-extended "make whole" process.

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[99] See Sprint at 30 n.25.

[100] See NCL at 5-6 (noting the problems that can be encountered in trying to reach Slamming Carriers and resolving disputes); PaOCA at 8 (noting that often a Slamming Carrier has no more than a post office box and voice mail); VSCC at 2-3 (noting the current "run around" process often employed by Slamming Carriers).

Furthermore, U S WEST agrees with AT&T, that the Commission's proposal that the Original Carrier make some type of "demand" on the Slamming Carrier within 10 days fails to provide sufficient time for such a demand to be made.[101] Furthermore, in U S WEST's opinion, requiring that the Original Carrier take any action seems to place the burden of taking action on the wrong carrier. The better proposal is to have the Slamming Carrier take action, as suggested by the TOPC. The TOPC proposes that whether the Slamming Carrier has been paid (and needs to remit funds) or has not been paid (and needs to remit records), the burden of taking action should be on that Carrier.[102] Thus, the timeframe in which action needs to be taken should be increased and the carrier required to take action should be switched.

Furthermore, U S WEST supports both the comments of SBC and the TOPC regarding the process associated with the carrier dispute resolution process. As suggested by SBC, to the extent that the Original Carrier cannot get the Slamming Carrier to respond, the certification necessary to be presented to the Commission should be able to be submitted by one carrier with a recitation of the facts associated with the attempt to proceed with private dispute resolution.[103] In this way, the certification process will not be unduly delayed.

The proposal of the TOPC that payment proceed final dispute resolution is

[101] AT&T at 12-13 and n.17.

[102] TOPC at 4.

[103] SBC at 13-14.

also a sound one.[104] Particularly in the context of "no fault" processing, there is no good reason to allow a Slamming Carrier to dispute the mechanics of the transaction while withholding revenues received. There are ample processes that can be crafted to reimburse the Slamming Carrier should it be entitled to reimbursement.

VIII. CONCLUSION

Based on the above comments, U S WEST urges the Commission to keep to a minimum the amount of broad industry regulation prescribed regarding PC solicitations, verifications, changes and protections. The Commission should increase its enforcement activities, focusing on those carriers who engage in deceptive and misleading practices, or whose unauthorized dispute figures and reporting demonstrate some egregious lapse in fair and sound commercial business practices.

Carriers should retain maximum flexibility in utilizing verification options. For this reason, the welcome option should be retained (with modifications) and the electronic authorization and 3PV models should be modified slightly to allow for their better practical applications.

The Commission should impose no "LEC or ILEC-only" mandates. The language of the statute certainly suggests Congress rejected such an approach. The Commission's rules should apply to all telecommunications carriers, with the exception of CMRS providers. With respect to the latter, both the business and

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[104] TOPC at 6.

industry structure virtually assure slamming is not a constituent element of the provision of CMRS.

Finally, the Commission should decline to increase industry costs associated with slamming prevention -- particularly where proposed "solutions" lack detail and evidentiary support to prove that they will operate to alleviate anything other than conjecture and speculation about what "might" occur in the industry or the market in the future is lacking. The Commission should focus its attention on the crafting of practical, real-world regulations, consistent with the First Amendment, that can be implemented with some degree of administrative ease and that focus on the problem to be solved. In that regard, the Commission should include within its final regulatory regime regulations that are clearly targeted to those carriers most obviously engaging in intentional slamming conduct.

Respectfully submitted,

U S WEST, INC.

By: 

Kathryn Marie Krause
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Its Attorney

Of Counsel,
Dan L. Poole

September 29, 1997

ATTACHMENT 1
Commenting Parties

360 Communications Company (360)
AirTouch Communications, Inc. (AirTouch)
America's Carriers Telecommunication Association (ACTA)
Ameritech Operating Companies (Ameritech)
AT&T Corp. (AT&T)
Bell Atlantic
Bell Atlantic Mobile, Inc. (BAM)
BellSouth Corporation (BellSouth)
Billing Information Concepts Corp. (BIC)
Brittan Communications International Corp. (BCI)
Cable and Wireless, Inc. (CWI)
Cincinnati Bell Telephone (CBT)
Citizens Communications (Citizens)
Competitive Telecommunications Association (CompTel)
The Direct Marketing Association (DMA)
Excel Communications, Inc. (Excel)
Florida Public Service Commission (FPSC)
Frontier Corporation (Frontier)
GTE Service Corporation (GTE)
Illinois Commerce Commission (ICC)
Intermedia Communications Inc. (Intermedia)
IXC Long Distance, Inc. (IXCLD)
LCI International Telecom Corporation (LCI)
Maryland Public Service Commission (MDPSC)
MCI Telecommunications Corporation (MCI)
Montana Public Service Commission (MPSC)
National Association of Attorneys General and the Attorneys General of the states of Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Ohio, Rhode Island, Tennessee, Vermont, Washington, West Virginia, and Wisconsin (Attorneys General)
New York State Consumer Protection Board (NYSCPB)
New York State Department of Public Service (NYDPS)
Office of the People's Counsel (OPC or Office)
Ohio Consumer's Counsel (OCC)
Pennsylvania Office of Consumer Advocate (PaOCA)
The People of the State of California and the Public Utilities Commission of the State of California (California or CPUC)
The Public Staff - North Carolina Utilities Commission (Public Staff)
The Public Utility Commission of Texas (PUCT)
RCN Telecom Services, Inc. (RCN)
Southern New England Telephone Company (SNET)
Southwestern Bell Telephone Company (SWBT), Pacific Bell (Pacific), and Nevada Bell (Nevada) (jointly "the SBC Companies")
Sprint Corporation (Sprint)
Telecommunications Resellers Association (TRA)
Tennessee Regulatory Authority (The TRA)
Time Warner Communications Holdings, Inc. (TW Comm)
TPV Services, Inc. (TPV)
United States Telephone Association (USTA)
U S WEST
Vermont Public Service Board
Virginia State Corporation Commission Staff (VSCC)
Working Assets Funding Service, Inc. (Working Assets)
WorldCom, Inc. (WorldCom)

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 29th day of September, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.*** to be served, via first-class United States Mail,** postage pre-paid, upon the persons listed on the attached service list.

Kelseau Powe, Jr.

*Pursuant to the July 15, 1997 Further Notice of Proposed Rule Making (FCC-97-248), paragraph 111, an electronic version of this filing is submitted to the Office of the Secretary (and Cathy Seidel of the CCB), on a 3x5 inch diskette, along with a cover letter.

**Served via hand-delivery

(1CC94129a-COS.KK/ss)

**Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

**James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

**Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

**Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

**Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

***Cathy Seidel
Federal Communications Commission
Room 6120
2025 M Street, N.W.
Washington, DC 20554

(Including a 3x5 diskette w/cover letter)

**Diane Harmon
Federal Communications Commission
Room 6310
2025 M Street, N.W.
Washington, DC 20554

**Formal Complaint Branch
Federal Communications Commission
Mail Stop 1600A1
Washington, DC 20554

(2 Copies)

**International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Betty Montgomery
Johnlander Jackson-Forbes
Public Utilities Commission of Ohio
180 Broad Street
Columbus, OH 43215-3793

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
11th Floor
1850 M Street, N.W.
Washington, DC 20036

John B. Adams
Citizens Communications
Suite 500
1400 16th Street, N.W.
Washington, DC 20036

Charles C. Hunter TRA
Catherine M. Hannan
Hunter Communications Law Group
Suite 701
1620 I Street, N.W.
Washington, DC 20006

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Robert S. Tongren
Ohio Consumers' Council
15th Floor
77 South High Street
Columbus, OH 43221-4568

Lawrence G. Malone
New York State
Department of Public Service
Albany, NY 12223-1350

Robert P. Gruber
Vickie L. Moir
North Carolina Utilities Commission
POB 29520
Raleigh, NC 27626-0520

Bryan G. Moorhous
Susan Stevens Miller
Maryland Public Service Commission
6 Saint Paul Street
Baltimore, MD 21202

Douglas W. Kinkoph
LCI International Telecom Corp.
Suite 800
8180 Greensboro Drive
McLean, VA 22102

Jonathan E. Canis INTERMEDIA
Andrea D. Pruitt
Kelley, Drye & Warren, LLP
Suite 500
1200 19th Street, N.W.
Washington, DC 20036

Richard McKenna
GTE Telephone Operations
600 Hidden Ridge
Irving, TX 75038

Gail L. Polivy
GTE Telephone Operations
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Jeffrey S. Linder GTE
Suzanne Yelen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

Ian D. Volner DMA
Heather L. McDowell
Venable, Baetjer, Howard
& Civiletti, LLP
Suite 1000
1201 New York Avenue, N.W.
Washington, DC 20005

Paul W. Kenefick
Cable and Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Genevieve Morelli
Competitive Telecommunications
Association
Suite 800
1900 M Street, N.W.
Washington, DC 20036

James G. Pachulski
Stephen E. Bozzo
Bell Atlantic Telephone Companies
8th Floor
1320 North Court House Road
Arlington, VA 22201

Gary L. Phillips
Ameritech Operating Companies
Suite 1020
1401 H Street, N.W.
Washington, DC 20005

Kathleen Q. Abernathy
AirTouch Communications, Inc.
Suite 800
1818 N Street, N.W.
Washington, DC 20036

Charles D. Cosson
AirTouch Communications, Inc.
29th Floor
One California Street
San Francisco, CA 94111

Charles H. Helein
Helein & Associates, PC
Suite 700
8180 Greensboro Drive
McLean, VA 22102

ACTA

Mark C. Rosenblum
Peter H. Jacoby
AT&T Corp.
Room 3250J1
295 North Maple Avenue
Basking Ridge, NJ 07920

M. Robert Sutherland
Richard M. Sbaratta
BellSouth Telecommunications, Inc.
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Gary L. Mann
IXC Long Distance, Inc.
Suite 700
98 San Jacinto Boulevard
Austin, TX 78701

Timothy S. Carey
New York State Consumer
Protection Board
Suite 2101
5 Empire State Plaza
Albany, NY 12223-1556

Michael J. Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Kevin C. Gallagher
360° Communications Company
8725 West Higgins Road
Chicago, IL 60631

John T. Scott, III
William D. Wallace
Crowell & Moring, LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004

BAMI

Dana Frix
C. Joel Van Over
Swidler & Berlin, Chartered
Suite 300
3000 K Street, N.W.
Washington, DC 20007

EXCEL

J. Christopher Dance
Robbin Johnson
Excel Communications, Inc.
8750 North Central Expressway
Dallas, TX 75231

Joseph Kahl
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, NJ 08540

Michael R. Gardner TPV
William J. Gildea, III
Michael R. Gardner, PC
Suite 710
1150 Connecticut Avenue, N.W.
Washington, DC 20036

Catriona Gay
#332
32 West Anapamu Street
Santa Barbara, CA 93101

Richard D. Fontana
2312 Kingbird Lane
Virginia Beach, VA 23455

John J. Zentgraf
Quick Response LLC
1720 South Queen Street
York, PA 17403

James Veilleux
VoiceLog LLC
9509 Hanover South Trail
Charlotte, NC 28210

Robert M. Lynch
Southwestern Bell Telephone
Company, et al.
Room 3520
One Bell Center
St. Louis, MO 63101

Nancy C. Woolf
Southwestern Bell Telephone
Company, et al.
Room 1529
140 New Montgomery Street
San Francisco, Ca 94105

Christopher J. Wilson CBTC
Jack B. Harrison
Frost & Jacobs, LLP
2500 PNC Center
201 East 5th Street
Cincinnati, OH 45202

David R. Poe TW
Yvonne M. Coviello
LeBoeuf, Lamb, Greene
& MacRae, LLP
Suite 1200
1875 Connecticut Avenue, N.W.
Washington, DC 20009

Paul B. Jones
Janis Stahlhut
Time Warner Communications
Holdings, Inc.
290 Harbor Drive
Stamford, CT 06902

Wendy S. Blueming
Southern New England Telephone
Company
227 Church Street
New Haven, CT 06510

Mary McDermott
Linda Kent
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

Peter M. Bluhm
Vermont Public Service Board
Drawer 20
Montpelier, VT 05620-2701

Catherine R. Sloan
WorldCom, Inc
Suite 400
1120 Connecticut Avenue, N.W.
Washington, DC 20036

Brian Sulmonetti
WorldCom, Inc.
Suite 400
1515 South Federal Highway
Boca Raton, FL 33432

Douglas F. Brent
WorldCom, Inc.
Suite 700
9300 Shelbyville Road
Louisville, KY 40222

Karen Finstad Hammel
Montana Public Service Commission
1701 Prospect Avenue
POB 202601
Helena, MT 59620-2601

Edward C. Addison
Virginia State Corporation Commission
POB 1197
Richmond, VA 23218

Robert W. Taylor
Brittan Communications
International Corporation
Suite 500
600 Jefferson
Houston, TX 77002

Bret Slocum
Public Utility Commission of Texas
1701 North Congress Avenue
POB 13326
Austin, TX 78711-3326

Gary M. Epstein HUGHES
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2505

Norman P. Leventhal TRW
Leventhal, Senter & Lerman
Suite 600
2000 K Street, N.W.
Washington, DC 20006-1809

Peter A. Rorhbach GE
Karis A. Hasting
Hogan & Hartson
555 13th Street, N.W.
Washington, DC 20004

Philip L. Malet MOTOROLA
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

Cynthia B. Miller
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Peter Arth, Jr.
People of the State of California
and the Public Utilities Commission
of the State of California
505 Van Ness Avenue
San Francisco, CA 94102

William B. Nash
GTE North
POB 31122
Tampa, FL 33631-3122

Lance L. Barclay
5917 Hillhaven Drive
Erie, PA 16509

H. Richard Seibert, Jr.
National Association of Manufacturers
Suite 1500
North Tower
1331 Pennsylvania Avenue, N.W.
Washington, DC 20004

Bradley Stillman
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006